

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

AMERICAN HERITAGE INTERNATIONAL,
INC.,)
Plaintiff,)
vs.)
ALI SARABI, et al.,)
Defendants.)

Case No. 2:15-cv-00101-GMN-CWH

ORDER

Presently before the Court is Plaintiff American Heritage International, Inc.’s (“American Heritage”) Motion for Entry of Default (ECF No. 13) against Defendants Ali Sarabi and Goo, LLC, supported by the Declaration of F. Christopher Austin (ECF No. 14), filed on March 12, 2015. Also before the Court is American Heritage’s Motion for Default Judgment (ECF No. 15) against Defendants Ali Sarabi and Goo, LLC, filed on April 2, 2015.

I. BACKGROUND

Plaintiff's process server's affidavit of due diligence states that on January 28, 2015, she attempted to serve Defendant Goo, LLC by personally delivering process to the company's registered agent, Defendant Sarabi, at 9225 W. Charleston Blvd., Apt. 1064, Las Vegas, NV 89117, which is the address listed for the company on the Nevada Secretary of State's website. (Aff. of Service (ECF No. 11), Ex. 4 at 2, Ex. 5.) The process server also attempted to personally serve Defendant Sarabi in his personal capacity at the same address. (Aff. of Service (ECF No. 12), Ex. 4 at 2.) According to the process server, 9225 W. Charleston Blvd., Apt. 1064, Las Vegas, NV 89771 is not a current address for either of the Defendants. (Aff. of Service (ECF No. 11), Ex. 4 at 2; Aff. of Service (ECF No. 12), Ex. 4 at 2.)

111

1 Plaintiff's attorney's legal secretary, Brandy A. Brown, submitted affidavits stating that on
2 January 29, 2015, Plaintiff's attorney received an email from Defendant Sarabi stating:

3 I have not received any complaint or notice in regards to this. Please forward the
4 domain in dispute to my attorney at

5 Boris Avramski
6 602 South 10th Street, Las Vegas, NV 89101
7 (702)-522-1808

8 (Aff. of Service on Def. Goo, LLC (ECF No. 11) at 2, Ex. 1; Aff. of Service on Def. Ali Sarabi
9 (ECF No. 12) at 2, Ex. 1.) Ms. Brown further states on January 29, 2015, she emailed a copy of the
10 summons and complaint to Defendant Sarabi and Boris Avramski. (Aff. of Service on Def. Goo,
11 LLC (ECF No. 11) at 2, Ex. 2-3; Aff. of Service on Def. Ali Sarabi (ECF No. 12) at 2, Ex. 2-3.)
12 On January 30, 2015, the process server personally served Mr. Avramski with the summons and
13 complaint. (Aff. of Service (ECF No. 11), Ex. 4 at 2; Aff. of Service (ECF No. 12), Ex. 4 at 2.)
14 Mr. Avramski subsequently contacted Plaintiff's attorney's office and "confirmed receipt of the
15 Summons and Complaint, but stated that he would not be representing the Defendants in the
16 present action and that he had not been informed by Defendants that he was to accept service."
17 (Aff. of Service on Def. Goo, LLC (ECF No. 11) at 2-3; Aff. of Service on Def. Ali Sarabi (ECF
18 No. 12) at 2-3.) Regardless, Ms. Brown states that Defendants received actual notice of the lawsuit
19 on January 29, 2015, the date that the summons and complaint were emailed to Defendant Sarabi.
20 (Aff. of Service on Def. Goo, LLC (ECF No. 11) at 2; Aff. of Service on Def. Ali Sarabi (ECF No.
21 12) at 2.)

II. ANALYSIS

22 Rule 4(e) of the Federal Rules of Civil Procedure provides, in relevant part, than an
23 individual may be served by:

24 (1) following state law for serving a summons in an action brought in courts of
25 general jurisdiction in the state where the district court is located or where service is
26 made; or
27 (2) doing any of the following:
28 (A) delivering a copy of the summons and of the complaint to the individual
personally;
(B) leaving a copy of each at the individual's dwelling or usual place of abode with
someone of suitable age and discretion who resides there; or
(C) delivering a copy of each to an agent authorized by appointment or by law to

1 receive service of process.

2 Rule 4(h) provides, in relevant part, that a business association must be served:

3 (1) in a judicial district of the United States:
 4 (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
 5 (B) by delivering a copy of the summons and complaint to an officer, a
 managing or general agent, or any other agent authorized by appointment or
 by law to receive service of process[.]

6 Rule 4 of the Nevada Rules of Civil Procedure governs service of process under Nevada state law,
 7 and it does not provide for service of process by electronic means. *See* Nev. R. Civ. P. 4.

8 Here, Plaintiff does not present the Court with any evidence indicating that Defendant
 9 Sarabi was personally served with the summons and complaint, either in his personal capacity or as
 10 registered agent for Defendant Goo, LLC. Plaintiff therefore does not establish that it properly
 11 served Defendant Sarabi under Federal Rule of Civil Procedure 4(e)(2)(A) or (B) or Defendant
 12 Goo, LLC under Rule 4(h)(1). Although Ms. Brown's affidavit states that Mr. Avramski was
 13 personally served on behalf of Defendants, Mr. Avramski's subsequent telephone call stating that
 14 he was not Defendants' attorney in this case and that he did not have authorization to accept service
 15 of process indicates that he is not an agent authorized to accept service on behalf of Defendants
 16 under Federal Rule of Civil Procedure 4(e)(2)(C) or 4(h)(1)(B).

17 As for Ms. Brown's statement that she emailed the documents to Defendant Sarabi, email
 18 service does not constitute proper service of process under Nevada Rule of Civil Procedure 4, and
 19 therefore does not constitute proper service under Federal Rule 4(e)(1) as to Defendant Sarabi or
 20 under Federal Rule 4(h)(1) as to Defendant Goo, LLC. Although Ms. Brown states that Defendants
 21 have actual knowledge of the lawsuit, Plaintiff does not provide any argument or legal authority
 22 indicating that a defendant's actual knowledge of a lawsuit obviates the need to serve the defendant
 23 under the Federal Rules of Civil Procedure. Without proper service of process, the Court does not
 24 have power to enter a judgment against the Defendants. *See Sec. & Exch. Comm'n v. Ross*, 504
 25 F.3d 1130, 1138 (9th Cir. 2007) (stating that "service of process is the means by which a court
 26 asserts jurisdiction over the person"). The Court therefore will deny Plaintiff's motion for entry of
 27 default and motion for entry of default judgment.

28 / / /

1 **III. CONCLUSION**

2 IT IS THEREFORE ORDERED that Plaintiff American Heritage International, Inc.'s
3 Motion for Entry of Default (ECF No. 13) is DENIED without prejudice.

4 IT IS FURTHER ORDERED that American Heritage's Motion for Default Judgment (ECF
5 No. 15) is DENIED without prejudice.

6

7 DATED: October 27, 2015

8

9

10 
C.W. Hoffman, Jr.
United States Magistrate Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28